

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re APPLICATION Pursuant to 28 U.S.C. § :
1782 for an Order Permitting Awendale : No. 17 - NC - 00517
Resources Inc. to Take Discovery From Citibank :
N.A. New York, Standard Chartered Bank, :
Deutsche Bank Trust Company Americas, and :
Bank of America, N.A. for Use in Foreign :
Proceedings. :
: x

DECLARATION OF LYDIA HABETS

LYDIA HABETS, declares under penalty of perjury as follows:

1. I am the director of Awendale Resources Inc. ("Awendale"), a company incorporated in the Republic of Seychelles with its office located at 2nd Floor, Allied Building Annex, Francis Rachel Street, Victoria, Mahe, Republic of Seychelles.
2. I respectfully submit this declaration in support of Awendale's application pursuant to 28 U.S.C. § 1782 to take discovery from Citibank N.A. New York, Standard Chartered Bank, Deutsche Bank Trust Company Americas, and Bank of America, N.A. for use in a contemplated criminal proceeding in Russia and for the pending civil proceedings described below in paragraph 23. In that regard, I respectfully request an Order authorizing Awendale's attorneys, Carter Ledyard & Milburn LLP, to serve subpoenas on Citibank N.A. New York, Standard Chartered Bank, Deutsche Bank Trust Company Americas, and Bank of America N.A. for documents regarding U.S. Dollar transactions involving the following companies:

Pyxis Capital Management Limited (Cyprus), Remington Trading Limited (Belize), Zhora Trading Limited (British Virgin Islands), and Open joint-stock company “Plant of Hearing Aids Ritm” (“Ritm”) (collectively referred to herein as “the Borrowers”). Such discovery is necessary in order to prove the allegations to be made by Awendale in the Russian criminal proceeding, including without limitation the allegation that the Borrowers have defrauded Awendale since such transactions will show where the funds loaned by Awendale to the Borrowers totaling USD 39,564,736.62 were diverted to instead of being used for their proper purpose as described further below, and for the pending civil proceedings described below in paragraph 23.

3. The link <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=237937341> indicates that Citibank N.A. New York has a location at 399 Park Avenue, New York, New York 10043.
4. The link <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=2827228> indicates that Deutsche Bank Trust Company Americas has an office at 60 Wall Street, New York, New York 10005.
5. The link <https://locators.bankofamerica.com/search?q=10005&rad=100> indicates that Bank of America, N.A. has an office at 29 Broadway, New York, New York 10006.
6. The link www.sc.com/us/branches.html indicates that Standard Chartered Bank has a location at 1095 Avenue of the Americas, New York, New York 10036.

A. BACKGROUND OF THE UNDERLYING BUSINESS

7. In 2013-2015 Awendale invested into a real estate venture related to construction in Moscow and the Moscow region. The joint venturers are and/or were the beneficiaries of the Borrowers, and later beneficiaries of a Russian development company called Glincom. The

parties' original intention and obligations were reflected in a document titled "Term Sheet" (a copy of which is attached as Exhibit 1), which laid out the basics of Awendale's obligation to provide loans to Zhora and those indicated by its beneficiary, Anton Agafonov. Among others, Awendale undertook the obligation to provide bridge loans to Zhora, as well as financing via loans to the venture, which was supposed to be secured by pledges of shares or property. Among the projects were shopping centers in Moscow called "Metromall" and "Zeleniy," an apartment complex called "Apartvill," as well as another project that never materialized. Investments were made by providing loans to the Borrowers, as well as through Melward Investments Limited ("Melward"), a Cyprus company affiliated with Awendale.

8. Pyxis was registered on May 23, 2007, registration number HE200255, registered office at 7B Gordonas Street, Agios Georgios Havouzas, 3070, Limassol, Cyprus. Its original shareholders were Cyprus nominees, Andreas Andreou and Giannoyla Daliti. Melward currently holds 47.27% of the shares in Pyxis. Pyxis was managed by a local managing company that has recently resigned and does not have a board of directors.

B. INVESTMENTS

9. As mentioned above, Awendale's investments were made through loans from Awendale to the Borrowers.

Loan agreements between Awendale and Zhora

10. Awendale and Zhora signed two agreements:

Loan Agreement No.3M/A/001 dated December 26, 2013 (a copy of which is attached hereto as Exhibit 2)

- a. Amount: USD 4 million.
- b. Final repayment date: February 15, 2014 (extended until April 1, 2014, in additional agreement dated February 14, 2014).

- c. Applicable law: Russian, dispute resolution: Russian courts.
- d. The loaned funds were transferred to Zhora's bank account at BSI AG Zurich on December 30, 2013. The loan agreement states that Zhora's bank uses a correspondent account at Citibank N.A. New York. Ex. 2 at ¶ 12.1.
- e. As per Additional Agreement No. 1 dated December 30, 2013, Zhora or a third party obliged to provide security in the form of a pledge of immovable property, which was never done.
- f. Zhora partially repaid the loan where it made the following payments:
 - i. On June 3, 2014: USD 3,653,479.45 of the principal amount plus USD 346,520.55 of interest and penalties accrued;
 - ii. On April 7, 2015: USD 205,151 of interest and penalties accrued.

Loan Agreement No. LA-190214 / AW-Z dated February 19, 2014 (a copy of which is attached hereto as Exhibit 3)

- a. Amount: USD 3 million.
- b. Final repayment date: April 1, 2014.
- c. Applicable law: English, dispute resolution: courts of England and Wales.
- d. The loaned funds were transferred to Zhora's bank account at BSI AG Zurich on March 4, 2014. The loan agreement states that Zhora's bank uses a correspondent account at Citibank N.A. New York. Ex. 3 at ¶ 12.1.
- e. Zhora partially repaid the loan where it made the following payments:
 - i. June 3, 2014: USD 858,219.18 of the principal amount plus USD 141,780.82 of interest and penalties accrued;
 - ii. June 10, 2014: USD 1,980,078.50 of the principal amount plus USD 19,921.50 of interest and penalties accrued;

iii. April 20, 2015: USD 27,874.95 of the principal amount plus USD 67,467.52 of interest and penalties accrued.

Loan agreements between Awendale and Ritm

11. Awendale and Ritm signed two agreements:

Loan Agreement No. DZ-14-3 dated February 20, 2014

a. Amount: USD 1.8 million;

b. Final repayment date: April 1, 2014 (extended until July 4, 2014 by an additional agreement dated May 30, 2014).

c. Applicable law: Russian, dispute resolution: Russian courts;

d. The loaned funds were transferred to Ritm's bank account at Russian Novikombank (which according to page 3 of a document drafted by the bank itself, a copy of which is attached hereto as Exhibit 4 along with a translation from Russian to English, holds a USD account at Deutsche Bank Trust Company Americas) in several tranches:

i. February 24, 2014: 35,682,800 rubles,

ii. March 2, 2014: 11,615,600 rubles,

iii. March 7, 2014: 4 million rubles,

iv. March 13, 2014: 3 million rubles,

v. March 19, 2014: USD 286,042.87.

e. Ritm partially repaid the loan where it made the following payments:

i. July 1, 2014: USD 1,728,605.53 of the principal amount plus USD 71,394.47 of interest and penalties accrued;

ii. May 12, 2015: USD 19,593.38 of the principal amount plus USD 51,801.09 of interest and penalties accrued.

Loan Agreement No. DZ-070414 dated April 07, 2014

- a. Amount: USD 500,000.
- b. Final repayment date: May 1, 2014 (extended until July 4, 2014 by an additional agreement dated May 30, 2014).
- c. Applicable law: Russian, dispute resolution: Russian courts.
- d. The loaned funds were transferred to Ritm's bank account at Russian Novikombank (which according to page 3 of a document drafted by the bank itself, a copy of which is attached hereto as Exhibit 4 along with a translation from Russian to English, holds a USD account at Deutsche Bank Trust Company Americas) on April 8, 2014.
- e. Ritm partially repaid the loan where it made the following payments:
 - i. July 1, 2014: USD 486,191.78 of the principal amount plus USD 13,808.22 of interest and penalties accrued;
 - ii. May 12, 2015: USD 3,789.51 of the principal amount plus USD 10,018.71 of interest and penalties accrued.

Loan agreement between Awendale and Remington

- 12. Awendale and Remington signed one loan agreement No. LA-240114 dated January 24, 2014:
 - a. Amount: USD 2,754,736.62.
 - b. Final repayment date: February 15, 2014 (extended until April 1, 2014 by an additional agreement dated February 14, 2014).
 - c. Applicable law: Russian, dispute resolution: Russian courts.
 - d. On January 24, 2014, the loaned funds were transferred to Remington's account at Verwaltungs-und Privat-Bank Aktiengesellschaft (Liechtenstein), which is now called

VP Bank and, according to a document from VP Fund Solutions (a copy of which is attached hereto as Exhibit 5), uses a correspondent account at Standard Chartered Bank.

- e. Remington partially repaid the loan on June 13, 2014: USD 2,467,262.87 of the principal amount plus USD 287,473.75 of interest and penalties accrued.

Loan agreements between Awendale and Pyxis

- 13. Awendale and Pyxis signed the following loan agreements:

Loan Agreement No. 08-04/ARI dated April 08, 2014

- a. Amount: USD 2 million.
- b. Final repayment date: May 1, 2014.
- c. Applicable law: English, dispute resolution: courts of England and Wales.
- d. The loaned funds were transferred to Pyxis' account at Nordea Bank Danmark A/S, which according to the following links <https://www.nordea.com/Images/33-205903/SSI%20%20-%20Aug%207%202017.pdf> (a printout of which is attached hereto as Exhibit 6) and <https://www.nordea.com/Images/35-30848/Nordea-Standard-Settlement-Instructions.pdf> (a printout of which is attached hereto as Exhibit 6) uses Bank of America as a correspondent bank, on April 8, 2014.
- e. No repayment has been made.

Loan Agreement No. LA-040614/AW-P dated June 04, 2014

- a. Amount: USD 1 million.
- b. Final repayment date: June 4, 2016.
- c. Applicable law: English, dispute resolution: courts of England and Wales;
- d. The loaned funds were transferred to Pyxis' account at Nordea Bank Danmark A/S, which according to the following links <https://www.nordea.com/Images/33->

205903/SSI%20%20-%20Aug%207%202017.pdf (a printout of which is attached hereto as Exhibit 6) and https://www.nordea.com/Images/35-30848/Nordea-Standard-Settlement-Instructions.pdf (a printout of which is attached hereto as Exhibit 6) uses Bank of America as a correspondent bank, on June 4, 2014.

- e. Pyxis partially repaid the loan by making a payment on May 23, 2016 in the amount of USD 777,608.00 towards the principal.

Loan Agreement No. LA-250614/AW-P dated June 25, 2014

- a. Amount: USD 500,000.
- b. Final repayment date: June 25, 2016.
- c. Applicable law: English, dispute resolution: courts of England and Wales.
- d. The payment was made to Pyxis' account at Nordea Bank Danmark A/S, which according to the following links https://www.nordea.com/Images/33-205903/SSI%20%20-%20Aug%207%202017.pdf (a printout of which is attached hereto as Exhibit 6) and https://www.nordea.com/Images/35-30848/Nordea-Standard-Settlement-Instructions.pdf (a printout of which is attached hereto as Exhibit 6) uses Bank of America as a correspondent bank, on June 26, 2014.

- e. No repayment has been made.

Loan Agreement No. LA-030714/AW-P dated July 03, 2014

- a. Amount: USD 500,000.
- b. Final repayment date: June 25, 2015.
- c. Applicable law: English, dispute resolution: courts of England and Wales.
- d. The loaned funds were transferred to Pyxis' account at Nordea Bank Danmark A/S, which according to the following links https://www.nordea.com/Images/33-

205903/SSI%20%20-%20Aug%207%202017.pdf (a printout of which is attached hereto as Exhibit 6) and https://www.nordea.com/Images/35-30848/Nordea-Standard-Settlement-Instructions.pdf (a printout of which is attached hereto as Exhibit 6) uses Bank of America as a correspondent bank, on July 3, 2014.

- e. No repayment has been made.

Loan Agreement No. LA-260614/AW-P dated July 04, 2014

- a. Amount: USD 21 million.
- b. Final repayment date: July 7, 2015.
- c. Applicable law: English, dispute resolution: courts of England and Wales.
- d. The loaned funds were disbursed through several tranches to Pyxis' accounts at Nordea Bank Danmark A/S, which according to the following links https://www.nordea.com/Images/33-205903/SSI%20%20-%20Aug%207%202017.pdf (a printout of which is attached hereto as Exhibit 6) and https://www.nordea.com/Images/35-30848/Nordea-Standard-Settlement-Instructions.pdf (a printout of which is attached hereto as Exhibit 6) uses Bank of America as a correspondent bank, and Rietumu Banka, which uses Deutsche Bank Trust Company Americas as a correspondent bank according to Exhibit 7, which is a copy of an order for payment made by Awendale to Pyxis from Awendale's account at Rietumu, and banks use same institutions for their transfers:
 - i. July 4, 2014: USD 5 million;
 - ii. July 16, 2014: USD 500,000;
 - iii. July 25, 2014: USD 1 million;
 - iv. July 29, 2014: USD 5 million;
 - v. September 3, 2014: USD 450,000;

- vi. October 16, 2014: USD 500,000;
- vii. October 24, 2014: USD 500,000;
- viii. November 12, 2014: USD 500,000;
- ix. December 8, 2014: USD 500,000;
- x. December 11, 2014: USD 250,000;
- xi. January 27, 2015: USD 500,000;
- xii. April 2, 2015: USD 210,000;
- xiii. April 7, 2015: USD 200,000;
- xiv. April 8, 2015: USD 1 million;
- xv. May 18, 2015: USD 2 million;
- xvi. September 14, 2015: USD 1 million;
- xvii. September 29, 2015: USD 500,000;
- xviii. October 23, 2015: USD 700,000;
- xix. November 20, 2015: USD 200,000.

e. Pyxis repaid USD 345,000 of the principal amount owed on April 24, 2015.

C. NEGOTIATIONS AND 2015 AGREEMENT

14. After the investments were made, Awendale's representatives made numerous attempts to obtain meaningful access to documents reflecting the investments and their use, but were repeatedly denied or mislead.
15. As part of its effort to obtain some measure of control and security over the investments, on March 26, 2015, representatives of Awendale, Melward, Zhora and Hatley signed a "heads of agreement" that described a plan for repayment of Awendale's investments ("2015 Agreement"), according to which Awendale and Zhora were to gain control over the

construction projects in Moscow until the loans were repaid. The control over the project should have been transferred to all the partners of Pyxis proportionally to their shares.

16. The 2015 Agreement provided, *inter alia*:

- a. that the debt owed by Pyxis to Awendale amounted to USD 18.7 million without interest up to March 26, 2015;
- b. that the debt owed by Pyxis to Zhora amounted to USD 26.8 million without interest up to March 26, 2015;
- c. that the main debt owed by Pyxis to Awendale should be repaid at during the first stage of repayment plan.

17. Control was never transferred to Awendale as one of the lenders. The 2015 Agreement similarly provided for “key project management decisions” to be taken by consensus of Awendale and Zhora, meaning that both had to agree on key decisions. Moreover, the 2015 Agreement provided for further financing of the projects, where Awendale was to provide USD 9.5 million to perform certain obligations. In case the funds were not sufficient, the projects should have been further funded by Awendale and Zhora through loans on the same terms on a 50/50 basis. The 2015 Agreement also provided for the procedure for distribution of a free cash flow generated by the partnership after the further financing is completed.

18. After the non-payment of the loans and lack of fulfillment obligations under the 2015 Agreement, Awendale’s representatives started negotiating with the Borrowers’ representatives. Discussions continued until the end of 2016, at which time they were suddenly cut off.

19. I have been advised by Awendale's Cyprus counsel, that the total value of the Pyxis assets is less than the amount of its debts. Pyxis is a registered holder of the shares in the following Cyprus companies:
 - a. 100% of the shares in Rafianso Holding Limited ("Rafianso") located in Limassol.
 - b. 50% of the shares in Shontez Services Limited ("Shontez") located in Nicosia, in which another 50% of the shares are held by Nicola Pafitis (Copies of the extracts are attached hereto as Exhibit 8).
20. Rafianso is a parent company of the Russian company OOO "TETA", which, in turn, holds 75.626% of the shares in the Russian company AO "OKTO", which owns a shopping center called "Zeleniy". Rafianso is also a parent company to RITM, which owns the apartment complex "Apartvill," and is one of the Borrowers.
21. Shontez holds 96.976% of shares in the Russian company AO "AVERS-M", which owns a shopping center called "Metromall".
22. According to the information available to me, a lot of the apartments and offices of the shopping center and the apartment complex referred to above have been transferred to third parties and Awendale has not received any consideration in accordance with the 2015 Agreement. Similarly, as I understand it, Melward, as a shareholder of Pyxis, has also not received any money from those transactions.

D. PROCEEDINGS IN THE RUSSIAN COURTS

Arbitrash courts

23. In July 2017, Awendale filed two suits against Ritm in Moscow Arbitrash (Commercial) Court for repayment of the debts under the Loan Agreement No. DZ-14-3 dated February 20, 2014 and the Loan Agreement No. DZ-070414 dated February 7, 2014. (Copies of the

Statement of Claim filed in each of those suits, along with a translation of each from Russian to English, are attached hereto as Exhibits 9 and 10, respectively.) Both cases are due to be heard in January-February 2018.

E. CYPRUS PROCEEDINGS

24. On September 18, 2017, Awendale sent a so-called statutory demand letter (a copy of which is attached hereto as Exhibit 11) to Pyxis demanding return of the loaned funds plus interest. As I understand from Awendale's Cyprus counsel, under Cyprus law Pyxis had 21 days to respond. No response was received after this period lapsed, and on November 15, 2017 Awendale applied to the Cyprus court with a petition for winding-up Pyxis and an ex parte application for an appointment of a provisional liquidator. The petition is set for a first appearance on January 22, 2018, while the application for an appointment of a provisional liquidator of Pyxis has been heard and granted by the Cyprus court conditioned on Awendale providing countersecurity, which is ongoing.

F. BVI PROCEEDINGS

25. On October 13, 2017, Awendale sent a so-called statutory demand letter (a copy of which is attached hereto as Exhibit 12) to Infinitum Ventures Limited ("Infinitum") demanding return of the loaned funds plus interest and penalties. I have been advised by Awendale's BVI counsel that Zhora changed its name to Infinitum on July 31, 2015. The company number stayed the same. A Register of Companies Search Report is attached as Exhibit 13.

26. On October 30, 2017, Infinitum applied to the BVI court to set aside Awendale's demand. A hearing has been set for January 15, 2018, before which time Awendale must serve a reply to the application.

SUMMARY OF THIS APPLICATION

27. In the hopes of finding information about the (mis)use of Awendale's funds, Awendale's Russian attorneys notified Awendale that sometime in 2015 a criminal complaint was filed against unidentified persons at Glincom for fraud relating to unfulfilled real estate obligations.
28. Considering the above described behavior by the Borrowers and their affiliates, Awendale's Russian counsel has drafted a criminal complaint that is due to be filed shortly. One of the shortcomings of the Russian legal process, however, is the lack of discovery available to litigants or victims of wrongdoing. Moreover, since at least around 2015 representatives of the Borrowers have deprived Awendale from any kind of meaningful access to information regarding the use of the loaned funds and the state of affairs in the venture.
29. In order to give Awendale an opportunity to prove its case and the investigator to investigate the events described above, in this application, I respectfully request that the Court authorize Awendale's attorneys, Carter Ledyard & Milburn LLP, to serve subpoenas on Citibank N.A. New York, Standard Chartered Bank, Deutsche Bank Trust Company Americas, and Bank of America N.A., requesting documents concerning the following: (1) transaction details regarding any and all payments received or made by Zhora using a correspondent account at Citibank N.A. New York between December 26, 2013 and December 31, 2015, (2) transaction details regarding any and all payments received or made by Infinitum Ventures Limited using a correspondent account at Citibank N.A. New York between July 31, 2015 and the present, (3) transaction details regarding any and all payments received or made by Ritm using a correspondent account at Deutsche Bank Trust Company Americas after receiving loaned funds from Awendale between February 20, 2014 and the present; (4) transaction details regarding any and all payments received or made by Remington using a

correspondent account at Standard Chartered Bank after receiving loaned funds from Awendale between January 24, 2014 and the present, (5) transaction details regarding any and all payments received or made by Pyxis using its correspondent accounts at Bank of America, N.A. and Deutsche Bank Trust Company Americas after receiving funds from Awendale between April 8, 2014 and the present.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on December 12, 2017
in Victoria, Seychelles

Habets
Lydia Habets